

# Invicta Apex Private Limited General Terms and Conditions of Purchase

## Invicta Apex Private Limited General Terms and Conditions of Purchase

### 1. General.

(a) *Application.* These General Terms and Conditions of Purchase ("Terms and Conditions") will apply to the purchase order or other document to which these Terms and Conditions are attached or in which these Terms and Conditions are incorporated by reference (such purchase order or document, the "Order") unless otherwise agreed in writing between Buyer and Seller.

(b) *Definitions.* "Agreement" means these Terms and Conditions, together with the Order into which they are incorporated, as well as all other documents incorporated by reference in the Terms and Conditions and/or the Order. "Applicable Law" means all applicable laws, rules, regulations, orders, and other requirements of government entities, including, without limitation, all Labour Laws, like Workman's Compensation Act, Employees State Insurance Act, Payment of Wages Act, Bonus Act, Employees Provident Fund Act, Minimum Wages Act, Contract Labour (Regulation and Abolition) Act, etc. and any modification thereof, as well as all other applicable laws, statutes, regulations, rules, orders, decrees, and other requirements of governmental authorities having jurisdiction. "Buyer" means Invicta Consumer Private Limited or, if applicable, its affiliate that is named in the Order. "Buyer Site" means a location owned or operated by Buyer or any of its affiliates. "Goods" means the goods, material and equipment, as well as all drawings and other documents, listed on the Order or provided in connection with any Services. "Seller" means the supplier of Goods or Services. "Seller Group" means Seller, its subcontractors and their respective employees, subcontractors, agents, representatives and anyone invited onto a Buyer Site. "Services" means the services listed on the Order as well as all ancillary services provided with any Goods, including any software license or software as a service ("SaaS"). Terms not defined herein will have the meanings set forth in the Order.

(c) *Entire Agreement.* The Agreement supersedes all prior negotiations, discussions, and dealings concerning the subject matter hereof and will constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. Buyer objects to and rejects any provision additional to or different from the terms hereof that may appear in Seller's invoice, acknowledgement, confirmation, writing (electronic or otherwise), or in any other prior, contemporaneous or later communication from Seller to Buyer, unless such provision is in

accordance with the Amendment/Waiver section below. Seller's shipment of, or furnishing of Goods or Services, acknowledgement of the Order, commencement of performance or acceptance of any payment will constitute conclusive evidence of Seller's acceptance of the Agreement. In the event of a conflict between these Terms and Conditions and the Order, the Order will control.

2. Scope of Work. Seller, as an independent contractor, will, except as provided herein: (a) furnish all that is necessary, required, proper and incidental to the performance of the Order, including, but not limited to, all labour, services, supervision, machinery, equipment and materials (other than labour, materials and equipment furnished by Buyer), and (b) obtain any and all necessary licenses, permits, insurance coverage and bonds required by Applicable Law or specified herein in connection with the Order. All items that are shown, or reasonably inferable from the specifications provided by Buyer as being necessary to satisfy the Order will be the responsibility of Seller. Seller represents that it has examined all the contract documents and has fully acquainted itself with conditions relevant to the Goods and Services, it has made all investigations essential to the full understanding of the difficulties that may be encountered in performing under the Order, and assumes full and complete responsibility for completing all of Seller's obligations under the Order.

### 3. Deliveries.

(a) **Time is of the essence with respect to performance and delivery.** Delivery of the Goods and Services will be at the time(s) and place(s) and in quantities and on terms specified in the Order. Unless otherwise specified in the Order, Seller will deliver all Goods DDP (INCOTERMS 2010) (Buyer's designated location). If delivery of the Goods are expected to be delayed, Seller will promptly notify Buyer of the cause and expected duration of such delay and will take all reasonable steps, at Seller's cost and expense, to expedite delivery thereof. Deliveries to Buyer's designated location outside business days and business hours will not be accepted unless otherwise specified in the Order.

(b) Seller will ensure the Goods are properly preserved, secured, packed, containerized and labeled and otherwise prepared for shipment in accordance with the instructions of Buyer as specified in the Order and with accepted industry practice and carrier regulations, so as to prevent damage and deterioration. Seller will mark and label as follows: (i) each package will be marked to show the project and Order number; (ii) the packing slip will be included in each package containing, at a minimum, the Order and project numbers, description of Goods, quantity per line item, total number of boxes in shipment, and the final delivery address; and (iii) the package will be marked to indicate the packing slip is enclosed. On any imports from non-European Economic Community ("EEC") countries, Seller will transmit to Buyer, no later than one business day after the applicable shipping date, by fax or e-mail, the complete transport details, invoice and, as applicable, the bill of lading, airway bill or CMR for the purchased Goods. Seller

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will not charge Buyer any amounts for packing, crating or cartage except as specified in the Order.

(c) If at any time or for any cause whatsoever, Seller is unable to fulfil the terms and conditions of the Order, Seller will provide Buyer an option, to be exercised in Buyer's sole discretion, to (i) receive a pro-rata portion of the Goods Seller has on hand at the time it discovers its inability to perform or (ii) terminate all or part of the remaining portion of the Order. Unless otherwise agreed in writing, any pro-rata portion of Goods shipped to Buyer will be in the same proportion as the Order volume bears to the total Goods volume Seller has then contracted to sell. The exercise by Buyer of either option noted above will not prejudice Buyer's rights to damages in connection with any undelivered portion of the Goods.

(d) Seller and its suppliers will, at no additional cost to Buyer, expedite delivery, to include faster means of transportation, to meet established delivery schedules. When deemed advisable by Buyer, the Order will also be subject to expediting by Buyer or its customer, Seller hereby granting free, safe and clear access to Seller's and Seller's supplier's premises for expediting purposes.

### 4. Title/Risk of Loss/Buyer Property.

(a) The Goods or portions thereof, including data and work in progress, will become the property of Buyer and title to them will pass to Buyer upon delivery of the Goods to the delivery point designated, or when Buyer makes payment therefore, whichever occurs earlier. Notwithstanding any transfer of title prior to delivery, Seller will be responsible for, and will bear the risk of loss and damage to, the Goods until final completion of their delivery. Any loss or damage, resulting from Seller's non-conforming preservation, packaging, packing, crating or containerisation, whenever occurring, will be the responsibility of Seller.

(b) All property used by Seller that is owned, furnished, charged to, or paid for by Buyer will be segregated and identified to the Order, will be, and will remain, the property of Buyer, will be used only for Buyer's benefit and will be subject to removal and inspection by Buyer at any time without cost or expense to Buyer. Seller will assume all liability for, maintain and repair all such Buyer property and return the same to Buyer in its original condition, reasonable wear and tear excepted, at the completion or termination of the Order or as requested by Buyer. Buyer will have free access to Seller's and its vendors' premises for the purpose of inspecting or removing such property. Seller will not grant security interest in the Goods or any part thereof in favour of any third party.

**5. Inspection/Rejection of Goods.** All Goods will be received subject to Buyer's and its customers' audits, inspection, testing and rejection at all times and places. If requested by Buyer, Seller will provide to Buyer the results of all samplings, analysis, inspection or test relating to the Order. Seller shall, without additional charge, provide to Buyer and its customers, facilities and assistance for safe and convenient inspection. If Buyer finds any of the Goods to be defective in material or workmanship, or otherwise not in exact conformity with any warranty, specifications or the requirements of the Agreement, Buyer, in addition to any other rights which Buyer may

have under warranties or otherwise, may, at its sole election, reject such Goods. Seller will not replace rejected Goods without Buyer's prior written authorization, and Buyer, in its sole discretion, may obtain replacement Goods from another supplier. Buyer will hold rejected Goods at Seller's risk for a reasonable time and will return or dispose of rejected Goods in accordance with Seller's timely and reasonable written instructions and at Seller's sole cost and expense. If, within five (5) days after rejection of the Goods, Seller has not provided Buyer written instructions regarding disposition of rejected Goods, Buyer may (i) return such Goods at Seller's cost and expense or (ii) sell such Goods at the best price it can obtain (such determination will be in Buyer's sole discretion), and credit the proceeds therefrom to Seller's account, less Buyer's costs and expenses of sale, including a reasonable commission not to exceed ten percent (10%). Inspection of the Goods or payment by Buyer for Goods will in no event constitute an acceptance of such Goods. Moreover, Buyer's review or approval of Seller's methods, manufacturing procedures, drawings, calculations, and other documents will not relieve Seller of any responsibility for Goods delivered hereunder. Buyer's right to reject nonconforming Goods applies to all deliveries under the Order, whether or not they are in separate lots, whether or not the nonconformity substantially impairs the value of that installment, or whether or not the nonconformity with respect to one or more installments substantially impairs the value of the whole order, and regardless of location or passing of title to the nonconforming Goods. Seller will be liable for all of Buyer's costs for any additional audits, inspection, and/or testing to the extent caused by any failure of the Goods to conform to the requirements provided herein. The foregoing rights will be cumulative and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity.

### **6. Warranty**

(a) Seller warrants and covenants the following for Goods: (i) the Goods will conform to the specifications referred to in the Agreement and will be of merchantable and satisfactory quality and free from defect in design, material and workmanship; (ii) the Goods will conform to any statements or representations made to Buyer, or appearing in Seller's literature or advertisements; (iii) the Goods will be fit, safe and appropriate for the purpose for which the Goods are intended; (iv) Seller holds full, clear and unencumbered title to the Goods and will deliver such good and marketable title to the Goods and the Goods will be delivered to Buyer free of liens or encumbrances at which point, Buyer will acquire a valid and unencumbered title to the Goods; and (v) Seller has complied in all respects with all Applicable Laws relating to the manufacture, transportation and delivery of the Goods.

(b) Seller warrants and covenants it will perform the Services: (i) in a workmanlike manner using qualified, efficient and careful workers and in a manner as to cause minimum interference with other operations; (ii) in accordance with all plans, drawings, and

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specifications provided by Buyer; (iii) in compliance with all Applicable Laws; and (iv) otherwise in accordance with the Agreement.

(c) Unless otherwise specifically agreed to by the parties, Seller's warranties will be for eighteen (18) months after final acceptance of the Goods or Services, provided that warranties with respect to liens, title, intellectual property or latent defects will not terminate ("Warranty Period"). Seller will cause all warranties by third party suppliers of Goods or Services to be assigned to Buyer and will take all measures which Buyer considers necessary or desirable to assure Buyer timely receives the full benefit of all such warranties, regardless of whether they are assignable. Seller will provide Buyer true copies of all such warranties.

(d) If, during the Warranty Period, the Goods or Services are found to be defective or otherwise fail to conform to the warranties, and Buyer so notifies Seller, Seller shall, at Seller's sole expense and using its best efforts, promptly correct such nonconformity to the satisfaction of Buyer, failing which (i) Buyer may reject or revoke acceptance and cover by making purchase of substituted goods or services; (ii) Buyer may proceed to correct Seller's nonconforming work by the most expeditious means available, in which case, the costs for such correction will be for Seller's account; or (iii) Buyer may retain the nonconforming Goods or Services with an equitable reduction to the Order price to reflect the diminished value of such nonconforming Goods or Services.

(e) Buyer may assign to its customers and end-users of the Goods or Services any warranty rights Buyer may have under the Agreement, provided however, that the Order will not, and will not be construed so as to, establish privity of contract between Seller and Buyer's customers or end-users of the Goods or Services.

### 7. Price/Invoices/Payment.

(a) The price(s) for the Goods and/or Services will be as specified in the Order and, as stated therein, are firm, definite and not subject to price adjustment, and include all taxes, import duties, fees, charges and other expenses as applicable. Seller represents that the price(s) specified in the Order do not exceed the current selling price for the same or substantially similar goods or services to any other purchaser, taking into account the quantity under consideration. Seller will report and pay all taxes, import duties, fees, charges and expenses and will indemnify and hold harmless Buyer against any liability arising therefrom.

(b) Seller will invoice Buyer no later than 90 days after the sooner to occur of the delivery of the Goods or completion of the Services, and Buyer will have no obligation to pay any invoice submitted after that date. Seller's invoice will contain, at a minimum, the Order number, description of the Goods and/or Services, quantity per line item, unit price, extended price on each line, total value of the shipment, and country of origin. Where relevant, any invoice issued will be valid for sales tax, goods and services tax or any other similar tax that may be applicable under the Applicable Law.

(c) Buyer shall pay the price(s) set forth in the Order within 90 days from the later of (i) receipt by Buyer of all of the Goods and/or Buyer's final acceptance of the Services; or (ii) Buyer's receipt of an accurate invoice. All payments will be made in the currency listed in the Order or, if not listed, in United States dollars. If the payment due date is a day other than a business day, Buyer will make such payment on the next business day after such due date.

8. Changes. Buyer will have the right, at any time, to make changes in plans, drawings or specifications, packaging, time or place of delivery, or method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance, a party may send a written claim for any adjustment in price resulting from the change(s). Seller waives any claim by Seller for adjustment if such claim is not received in writing by Buyer within the earlier of fifteen (15) days after the date upon which Seller receives Buyer's changes or after the date of delivery. Buyer's claims for adjustment will be deemed agreed to by Seller unless Buyer receives Seller's objection thereto within the earlier of ten (10) days after the date of such claim or after the date of delivery.

9. Indemnity. To the fullest extent permitted by Applicable Law, Seller will defend, indemnify and hold harmless Buyer, its affiliates and any other related entities and their respective officers, directors, and employees (collectively, "Indemnitees") from and against all claims, liabilities, damages, causes of action, strict liability claims, penalties, fines, and expenses (including, but not limited to, attorneys' fees) (collectively, "Claims/Liabilities") arising out of or in any way relating to (a) any act or omission of the Seller Group, (b) any of the Goods and/or Services, and (c) any breach of the Agreement, negligent performance, failure or delay in performance of the Agreement, including, Claims/Liabilities relating to personal injuries, damage to property, or infringement of any property right, regardless of whether such Claims/Liabilities are to the Seller Group, Indemnitees or any other person or entity. The foregoing obligations include Claims/Liabilities that result from the negligence of any person or entity, including Indemnitees, except Seller will not be liable for Claims/Liabilities resulting from the sole negligence of Indemnitees. Seller's obligations under this section will survive the termination, revocation or expiration of this agreement. Buyer will have the absolute right and opportunity to participate in any investigation or defence and may, at its option and sole cost, hire separate counsel to represent Buyer. Seller's obligations under this Section will survive the termination, revocation or expiration of the Agreement.

10. Insurance. Seller, at its own expense, will carry insurance no less than the following: (a) if any part of the Services are performed on a Buyer Site, Worker's Compensation and Employers' Liability Insurance, as prescribed by Applicable Law; (b) Public Liability insurance, with a minimum limit of INR 10,000,000 per occurrence and in the aggregate for Bodily Injury and Property Damages (coverage will include naming Buyer as an additional insured or indemnity to principal to the fullest extent permitted by Applicable Law); (c) if the

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Services include operating vehicles on a Buyer Site, Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles with unlimited coverage for third-party Bodily Injury, and minimum limits as prescribed by Applicable Law for third-party Property Damage; and (d) if applicable to the Services, Professional Liability insurance providing not less than USD\$3,000,000 coverage, including a three year extended reporting period. The amounts listed above may be increased from time to time as required by Buyer. Buyer will be named as additional insured to Seller's Public Liability and Automobile Liability policies with respect to liability arising out of the Goods or Services provided by Seller. All policies (except for Worker's Compensation and Employers' Liability) will be primary to and not in excess or contributory with any other insurance available to

Buyer. All policies will contain provisions providing that the insurance companies will have no right of recovery or subrogation against Buyer or its affiliates. All policies shall provide for thirty (30) days' prior written notice to Buyer prior to cancellation, nonrenewal or material change of coverage. At Buyer's request, Seller will furnish Buyer with certificates setting forth the required insurance coverage. The insurance required hereunder will be obtained prior to commencing any Services under the Order and thereafter will remain in force throughout the Warranty Period. The obligations hereunder will not limit or modify in any way any other obligations assumed by Seller under the Agreement.

**11. Documentation.** Seller will provide to Buyer by the due date, in the specified format and quantities, all drawings, certificates and other documents specified in the Order and will also provide, as specified or required by industry standard, all other relevant and applicable data and documents.

**12. Set-Off.** Buyer reserves the right, at any time, to Set-off against any amount (irrespective of the currency of its denomination) that Buyer (or any of its affiliates) owes to Seller (or any of its affiliates) under the Order or any other agreement between or among any such parties and, if the obligations are in different currencies, may for such purpose convert or exchange any currency at the prevailing rate available to the Buyer from its bank. "Set-off" means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar right to which Buyer is entitled (whether arising under the Agreement, another agreement, Applicable Law, or otherwise). Any exercise by the Buyer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

**13. Proprietary Rights.**

(a) Seller hereby represents, warrants and covenants that it has not infringed or misappropriated, and that it will not infringe or misappropriate: (i) any patent covering Goods or use or sale thereof, or any method embodied in or resulting from the Goods, or (ii) any copyright, trademark, trade secret or other proprietary right with respect to the Goods.

(b) Seller Group has created or acquired (unrelated to the Goods and/or Services) rights in certain intellectual property, including various concepts, methodologies and techniques, models, templates, software, user interfaces and screen designs, general purpose consulting and software tools, and methods of operation of systems (collectively, "**Seller Intellectual Property**"); provided, however, "Seller Intellectual Property" will not include any of the foregoing created expressly by or on behalf of Seller Group for Buyer. Seller Group will retain all ownership rights in the Seller Intellectual Property. Buyer will acquire no right or interest in the Seller Intellectual Property, except for any license expressly granted herein or by a separate agreement between the parties. Seller agrees the term "Seller Intellectual Property," as used herein, will not include any of Buyer's Confidential Information, the Deliverables (defined below), or Buyer's tangible or intangible property and Seller will have no ownership rights in such property.

(c) Except for Seller Intellectual Property that is licensed to Buyer in this subparagraph or any separate agreement, and except for any material not created or owned by Seller Group, all deliverables or work product produced for Buyer hereunder (such items, subject to the foregoing exceptions, the "**Deliverables**") will be Buyer's exclusive property. As and when any Deliverable is delivered to Buyer, the ownership of such Deliverable will immediately vest in Buyer. Seller hereby assigns, and/or will cause the other members of Seller Group to assign, to Buyer all right, title, and interest it has in such Deliverable, including any copyrights or other intellectual property rights pertaining thereto. To the fullest extent possible, each Deliverable is intended to be a work for hire under all applicable copyright laws. Seller will execute and deliver, at Buyer's request, all documents necessary for Buyer to establish and maintain such rights in and to the Deliverables. If any Seller Intellectual Property is contained in any of the Deliverables, Seller hereby grants, and will cause the other members of Seller Group, to grant Buyer a worldwide, royalty-free, non-exclusive, transferable, irrevocable, and perpetual license to use, modify and copy (and distribute in connection with such permitted use) the Seller Intellectual Property in connection with the use of the Deliverables.

(d) Notwithstanding any proprietary legend or copyright notices to the contrary, Buyer and its customers and end-users of the Goods, may copy and reproduce documents and information furnished by Seller at any time and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining, modifying, permitting and licensing. If the Services involves any software (excluding SaaS or other cloud based software) not owned by Buyer as provided herein, then Seller hereby grants to Buyer, its Affiliates, and its and their respective contractors a non-exclusive, worldwide, uninterrupted license to use, install, modify and make copies of such software for its internal business purposes. If the Service involves any SaaS or other cloud based software not owned by Buyer as provided herein, then Seller hereby grants to Buyer, its affiliates, and its and their respective contractors a non-exclusive, worldwide, uninterrupted license to use and access such SaaS for its internal business purposes. The term for such license(s) will be the term specified in the Order or, if not specified, perpetual.

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**14. Default.** In addition to the remedies otherwise set forth in the Agreement, upon (a) the failure of Seller to perform any obligation in the Agreement (including any breach of a warranty) where Seller fails to either commence correction within two (2) business days after receipt of written notice thereof or complete such correction within the time period directed by Buyer or (b) the occurrence of a Bankruptcy Event (defined below), then Buyer, in its sole discretion and without prior notice to Seller, may do any one or more of the following: (i) suspend performance under the Order or any other agreement between Buyer and Seller; and/or (ii) terminate the Order, or any part of it, or any other agreement between Buyer and Seller, whereby any and all obligations of Seller including payments or deliveries due, will, at the option of Buyer, become immediately due and payable or deliverable, as applicable; and/or (iii) take possession, by whatever reasonable means and at whatever location and time, of all materials, tools and equipment used in performance of the Order and (x) in the case of Services, finish the work or (y) in the case of Goods, acquire equivalent goods by whatever method it may deem expedient, and in such cases, Seller will not be entitled to payment, if any, until all of the Goods are delivered to Buyer or Services are performed, all in accordance with the Order. The foregoing specific rights will be cumulative and alternative and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity. In addition, Buyer will be entitled to recover from Seller all court costs, legal fees and expenses (on a full indemnity basis) incurred by Buyer in connection with Seller's default. **"Bankruptcy Event"** means the occurrence of any of the following events with respect to Seller or its affiliates: (A) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (B) making of an assignment or any general arrangement for the benefit of creditors; (C) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing; (D) otherwise becoming bankrupt or insolvent (however evidenced); (E) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (F) suspending, or threatening to suspend, payment of its debts, or is (being a company) deemed unable to pay its debts within the meaning of section 254(2) of the Companies Act (Cap.50), or (being an individual) is deemed either unable to pay its debts within the meaning of section 62 of the Bankruptcy Act (Cap. 20), or (being a partnership) has any partner to whom any of the foregoing apply; (G) being generally unable to pay its debts as they fall due or (H) Seller is subject to any analogous event to (A) to (G) in any jurisdiction.

**15. Termination.** Buyer reserves the right to terminate the Order, or any part of it, for Buyer's sole convenience, upon written notice to Seller. If the Goods are manufactured or fabricated to Buyer's unique specifications and specifically prepared for Buyer (collectively, "**Specialty Goods**"), Seller will stop all work hereunder immediately following a termination

by Buyer, and will immediately terminate all suppliers' and subcontractors' contracts for performance hereunder. In full compensation for termination under this Section and only in the case of Specialty Goods, Buyer will pay Seller a reasonable termination charge. Unless otherwise set forth in the Order, such termination charge will be equal to a percentage of the price of the Specialty Goods (as shown in the applicable Order) reflecting the percentage of the work performed prior to the notice of termination, plus reimbursement of reasonable, actual direct costs resulting from termination; provided, however, the sum of such termination charge, plus payments previously made by Buyer, will in no event exceed the total purchase price under the Order. Seller will not be paid for the following: (a) any work done after receipt of such notice of termination, (b) any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided; and (c) any costs incurred by Seller for any goods or services for which Buyer has not issued an Order. In performing hereunder, Seller will not act in anticipation of a notice of termination, without prior written authorization from Buyer. Notwithstanding the above, in no event, will Buyer pay any termination charges for standard stock merchandise or catalogue items that are new and in saleable condition. Upon Buyer's written request, and upon expiration or other termination of the Order, Seller shall: (i) preserve, protect, and if so requested, transfer title to and deliver to Buyer, materials on hand and work in progress, both in Seller's and in its suppliers' plants or other facilities, and intellectual property (including licenses) purchased by Buyer, and (ii) transfer to Buyer all applicable government permits to the extent permitted. Following termination, Seller will be entitled for payment for all Services rendered prior to Buyer's notice of termination.

**16. Force Majeure.** Neither party will be liable for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure (defined below) *provided, that* the party prevented from performing its obligations (the "**Affected Party**") : (a) has promptly notified the other party upon becoming aware that any Force Majeure has occurred or is likely to occur and (b) has used commercially reasonable efforts to implement a workaround and to minimize any delay in or interference with the performance of its obligations under the Agreement. If Force Majeure prevents the Affected Party from performing any portion of its obligations under the Agreement for thirty (30) days or longer, then the other party may immediately terminate, in whole or in part, the Order, upon written notice to the Affected Party in which case Buyer will receive a pro-rata refund of any pre-paid amounts. **"Force Majeure"** means any cause not reasonably within the control of the claiming party, and will include any act of God, fire or explosion, flood, war, terrorism, riot, or act of governmental authority in response to a major national security threat or natural disaster.

**17. Assignability.** This Agreement may not be assigned (whether by operation of law or otherwise) in whole or in part by Seller without Buyer's prior written consent. Any assignment in violation of this provision will be void

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and will be considered a breach of the Agreement and will permit Buyer, in addition to any other rights which it may have, to terminate the Order.

### **18. Governing Law.**

(a) Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of the Agreement or the validity or breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration, and the award made in pursuance thereof shall be binding on the parties. The provisions of Part I of the

(Indian) Arbitration and Conciliation Act 1996, except section 9 thereof, are expressly excluded and shall not apply to such arbitration and proceedings.

(b) The arbitration shall be held, and the award shall be rendered, in the English language. The place of arbitration will be Bangalore, India and the governing law will be the substantive law of India.

(c) The existence and content of the arbitral proceedings and any rulings or award shall be kept confidential by the parties and the arbitral tribunal except (i) to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a court or other judicial authority, (ii) with the prior written consent of all parties, (iii) where needed for the preparation of a claim or defence in this arbitration, or (iv) where such information is already in the public domain other than as a result of a breach of this clause.

**20. Notices.** All notices, consents or other communications under the Agreement will be in writing and will be deemed received on the day of actual receipt; provided that if the date of receipt is not a business day or the communication is received after the close of business on a business day, the communication will be deemed given and effective on the first following day that is a business day.

**21. Taxes.** Seller will pay all taxes, duties, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") which may now or hereafter be imposed on or with respect to (a) the Goods at or prior to title and risk of loss passing to Buyer, and (b) the Services. If Buyer is required to remit or pay Taxes that are Seller's responsibility hereunder, Seller will reimburse Buyer for such Taxes within ten days of notice hereunder.

**22. Amendment/Waivers.** Neither party will claim any amendment, modification or release of any provisions of the Agreement unless the same is in writing and such writing: (i) specifically refers to the Order; (ii) specifically identifies the term amended; and (iii) is signed by duly authorized representatives of Seller and Buyer. No waiver by Buyer of any breach of the Agreement will be deemed a waiver of any continuing or subsequent breach of the same or any other provision of the Agreement. Nothing in this Section limits or excludes any liability arising as a result of fraud (including the making or any statements fraudulently) or wilful misconduct.

**23. Access To Buyer Site.** If and to the extent the Goods or Services are to be delivered or provided at any Buyer Site, Buyer will have the right to require the execution

of an access agreement, satisfactory to Buyer, prior to granting the Seller Group access to the Buyer Site. Seller agrees the Seller Group will comply with all safety rules and regulations applicable to such Buyer Site when at such Buyer Site.

**24. Tooling.** Unless otherwise specified by Buyer, Seller will furnish all necessary tools, dies, gauges, fixtures, drawing and patterns at its sole expense. Any and all rights, title and interest in all tools, dies, patterns, drawings, etc., which Buyer has ordered and paid for, will be the property of Buyer, will have asset tags affixed to such tooling identifying it as owned by Buyer and will be returned to Buyer in good condition with ordinary wear and tear excepted upon demand. No additional cost will be permitted should Buyer, at any time, demand the return of same. Seller expressly understands that all tooling, blueprints, sketches, trade secrets or other information or tangible items received from Buyer will be treated as bailed property of Buyer which will remain confidential and not be disclosed to any third parties for any reason or use, unless Buyer gives written consent. Buyer does not grant any rights, title and interest to Seller in Buyer's tooling, blueprints, sketches, trade secrets or other information or tangible items.

**25. International Transactions.** The United Nations Convention on Contracts for the International Sale of Goods will not apply to the transactions under the Agreement. Unless otherwise stated in the Order, the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference.

**26. Electronic Copies.** The Agreement may be exchanged electronically or stored electronically. The parties agree such electronically exchanged or stored copies will be enforceable as original documents. The parties consent to the use of such electronic copies and agree they will be binding, enforceable and admissible into evidence in any dispute regarding the Agreement.

### **27. Compliance with Applicable Laws.**

(a) Seller will comply fully with all Applicable Laws in its performance of the Agreement and will neither take nor refrain from taking any action that could result in liability for either Buyer or Seller under Applicable Law, including the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control (31 C. F. R. Chapter V) or the U.S. Commerce Department's Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Seller will not export/re-export any technical data, process, product or service of Buyer, directly or indirectly, in violation of any Applicable Law. Seller's breach of the preceding sentences will constitute cause for immediate termination of the Order. Neither Buyer nor Seller will be required to take or refrain from taking any action impermissible or penalized under any Applicable Laws.

(b) Without limiting the generality of any other provision of the Agreement, Seller agrees to comply with all Anticorruption Laws (defined below) and not otherwise take any steps that would subject Buyer, its affiliates or any of their respective representatives to any civil or criminal

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penalties or loss of benefits. In connection therewith, (i) Seller will not:

- (A) pay, promise to pay or authorize the payment of any money or anything of value (including, without limitation, any gifts, entertainment or travel), directly or indirectly, to any person for the purpose of or where there is a reasonable likelihood of (i) inducing such person to perform improperly, or fail to perform, his or her function, (ii) securing an improper advantage, or (iii) inducing such person to use his or her influence to affect or influence any act or decision. Seller acknowledges the prohibitions in this Section include any situation in which the person making the payment knows, believes or is aware of a reasonable likelihood that the person receiving the payment will pass the payment through, in whole or in part, to any person for any of the foregoing prohibited purposes.
- (B) retain any Government Official (defined below), or any person whose immediate family member is a Government Official, in an official or unofficial capacity, to perform any service for Buyer or its affiliates;
- (C) pay or commit to pay anything of value directly to or indirectly for the benefit of (including, without limitation, in cases in which there is a reasonable likelihood that the person receiving the payment will pass the payment through to) any Government Official;

(ii) Seller warrants and represents that neither itself nor any of its officers, employees or persons associated with it:

- (A) has been convicted of any offence involving the Anticorruption Laws;
- (B) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anticorruption Laws; or
- (C) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

(iii) Seller will promptly notify Buyer if, at any time during the term of this Agreement, it breaches any portion of this Section or it would not be able to repeat the

representations or warranties made in this Section at the relevant time.

- (iv) **Definitions:**  
“Anticorruption Laws” mean (i) the U.S. Foreign Corrupt Practices Act, (ii) the U.K. Bribery Act 2010, (iii) the OECD Anti-Bribery Convention, and (iv) any other Applicable Laws dealing with improper or illegal payment, gifts or gratuities or commercial or governmental bribery.  
“Government Official” means an officer, employee or representative of any government entity, governmental authority, agency, instrumentality, political party or multilateral agency.
- (c) If requested by Buyer, Seller shall promptly provide to Buyer the country of origin and the appropriate export classification codes including, if applicable, the Export Control Classification Number (ECCN) and the Harmonized Tariff Codes of the Goods supplied pursuant to the Order (including Goods provided as part of Services performed hereunder) and any other information required for trade preferential or customs agreements, if applicable.
- (d) The Goods and/or Services will satisfy or exceed:  
(i) all applicable legal requirements established by Applicable Law; and (ii) all applicable engineering or material standards, including, but not limited to, any ASTM, ANSI, NEC or other recognized standards with respect to quality and fitness.
- (e) If and to the extent Seller loads, unloads or ships “hazardous materials” (as designated in accordance with 49 C.F.R. Parts 100185, as amended from time to time), Seller hereby warrants that all such materials will be prepared for shipment, loaded, shipped and unloaded in compliance with all Applicable Laws. Seller will indemnify and defend Buyer and its affiliates from all liability of whatever nature (including attorneys' fees and expenses) to which they may become subject as a result of Seller's failure to comply therewith. Seller will be responsible for all hazardous materials, including the disposal thereof, resulting from the manufacturing of the Goods and the provision of the Services.
- (f) Upon request, Seller will promptly furnish all documents and other information required by Buyer to comply with all customs, tariff, local encryption registrations or other applicable governmental regulations.

**27. Independent Contractor.** The Seller Group are not agents or employees of Buyer and have no authority to obligate or bind Buyer in any way without the express written permission of an appropriate officer of Buyer. Seller agrees and acknowledges the Seller Group are not eligible for Buyer's employee benefit program. Seller (as between Seller and Buyer) is fully and solely responsible for all taxes, assessments, penalties, fines, and interest relating to wages and benefits paid to its (or its subcontractors') employees under the Agreement, pursuant to all Applicable Laws, including required withholding from wages of employees, regardless of the characterization of those employees by the parties, administrative agencies, or the courts.

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28. **No Third Party Beneficiaries.** Except in respect of rights expressly granted herein, a person or entity that is not a party to the Agreement, has no right to enforce any provision of the Agreement under the Contracts (Right of Third parties) Act (Cap. 53B) or otherwise. The Agreement may be rescinded or terminated and a term may be amended or waived without the permission of any third party granted rights under the Agreement.

29. **Severability.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of its other provisions.

### 30. Confidentiality.

(a) Seller will keep the Confidential Information (defined below) confidential and will not disclose all or any part of the Confidential Information to any third party (except as expressly allowed herein or as may be compelled by Applicable Law, a government agency or a court or other tribunal, and only then after giving Buyer reasonable notice and opportunity to object). Seller may disclose Confidential Information only to (i) those of its employees who reasonably require access to the Confidential Information for purposes of performing under the Agreement, and (ii) those members of Seller Group authorized by Buyer to have access to the Confidential Information. Seller will ensure any such persons receiving any Confidential Information treat it in accordance with the Agreement. Seller agrees the Confidential Information will not be processed and/or used by Seller Group for any purpose other than performing as required under the Agreement. Seller will limit duplication of Confidential Information to only the number of copies reasonably required for performing under the Agreement. Within 20 days after receipt of Buyer's written request, Seller Group will, at Buyer's sole option, either return all originals and copies of the Confidential Information in every media in Seller's possession or control, or destroy all such originals and copies and certify in writing to such destruction and the destruction method. To the extent Applicable Law does not permit Seller to destroy any Confidential Information, Seller will notify Buyer of such law and the required retention period and permit Buyer to respond to such requirement. Seller will continue to be bound by this Section for any retained Confidential Information.

(b) The term "**Confidential Information**" means all information that Seller Group, directly or indirectly, acquires from Buyer or its affiliates hereunder, and all information that arises out of the performance under the Agreement, including Personal Data (defined below) and information concerning the business plans and operations of Buyer and its affiliates; provided, however, Confidential Information will not include (i) information that is, at the time of disclosure, development, observance or discovery hereunder (the "Time of Access"), or subsequently becomes, within the public knowledge generally through no fault of Seller Group; (ii) information that Seller Group can show was known to it (on a non-confidential basis) as of the Time of Access, independent of anything relating to Buyer, its affiliates or the performance hereunder; and (iii) information that Seller Group can show was lawfully obtained (on a nonconfidential basis) from a third party (independent of anything relating to Buyer, its affiliates or the performance hereunder) and that such third party lawfully obtained the information, through no fault of Seller Group, subsequent to the Time of Access.

The term "Personal Data" means any data, information or record that directly or indirectly identifies a natural person or relates to an identifiable natural person, including but not limited to, first name, last name, address, telephone number, e-mail address, payment card data, Social Security Number, date of birth, driver's license number, age, consumer preferences, medical and health-related information and any other personally identifiable information that Seller Group processes in connection with its performance hereunder.

(c) Seller agrees, at all times, it will take all appropriate and commercially reasonable measures to comply with all safeguards and industry standards concerning privacy, data protection, confidentiality and information security.

(d) Seller will promptly notify Buyer (unless otherwise prohibited by Applicable Law), in writing, of any breach of this Section or any actual or suspected loss, theft or other unauthorized use, disclosure, acquisition, transmission of or access to, or other unauthorized processing of Confidential Information that reasonably may compromise the privacy or confidentiality of the Confidential Information ("Security Incident") of which Seller becomes aware. In the event of a Security Incident, such written notice will summarize the nature of the Security Incident, the suspected lost, comprised or stolen data, if known, and the corrective action taken or to be taken by Seller. Seller will take prompt corrective actions, and will fully cooperate with Buyer in all efforts to mitigate or rectify such Security Incident.

(e) Seller acknowledges that the Confidential Information may relate to or belong to Buyer's affiliates, and agrees each such affiliate shall be protected by all terms and provisions of the Section, including for purpose of enforcing the provisions hereof. Seller's duties under this Section will survive the termination or expiration of this Agreement.

31. **Use of Buyer Name.** Unless it obtains the prior written consent of Buyer, Seller Group will not: (i) use any name, trade name, logo, trademark, or service mark owned or used by Buyer or any of its affiliates, or (ii) represent, directly or indirectly, that any product or service offered by Seller Group has been used, approved, or endorsed by Buyer or any of its affiliates.

32. **Miscellaneous.** The captions and section headings set forth in the Order and Terms and Conditions are used for convenience only and will not be used in defining or construing any of the terms and conditions set forth in the Agreement. The term "days", as used herein, will mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "business days" will mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "including" or any variation thereof means "including, without limitation" and will not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicates otherwise, words importing the singular number will include the plural and vice versa, and words importing person will include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and

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words of masculine gender will be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require.

*[End of General Terms and Conditions of Purchase]*